

Midwives' fear of litigation: justified or not?

Renu Barton-Hanson Associate Professor in Law (r.barton-hanson@mdx.ac.uk) & Jo Killingley Midwifery Lecturer (j.killingley@mdx.ac.uk)

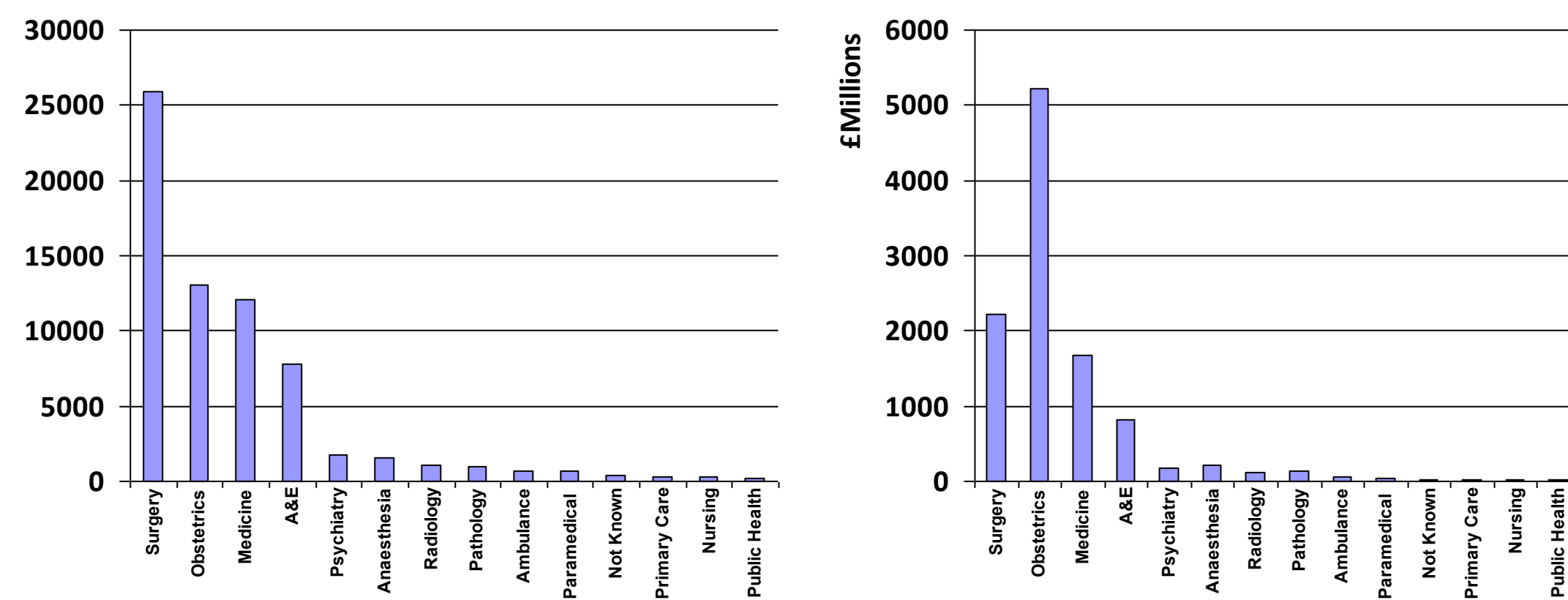
Introduction

This project explores to what extent midwives' fear the threat of legal action in their practice, and if they do, what they fear.

It investigates whether these fears match the reality of the likelihood of litigation as measured by the frequency and nature of clinical negligence claims brought against midwives.

Background

In 2012 the NHS Litigation Authority (NHSLA) reported that maternity claims accounted for the highest value and represented the second most numerous claims under the Clinical Negligence Scheme for Trusts (CNST). They note a figure of 1,300 obstetrics and gynaecology claims totalling over £5.2 billion between 1995 and 2011. The National Audit Office report during 2012-13 £482 million was spent on maternity claims (HC 794 8th Nov 2013 para 15).



Total number of reported CNST claims (01/04/95 to 31/03/11) Total value of report CST claims (01/04/95 to 31/03/11)

References

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- JH Robertson and AM Thomson, "A Phenomenological Study of the Effects of Clinical Negligence Litigation on Midwives in England: The Personal Perspective" (2013) 30 Midwifery 121.
- Karen Lane, "Fear of Litigation: The Tail That Wags the Dog" in C Brown and others (eds), The Australian Sociological Association 2001 Conference. The University of Sydney: 13-15 December (2001).
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- Laraine Hood, Jennifer Fenwick and Janice Butt, "A Story of Scrutiny and Fear: Australian Midwives' Experiences of an External Review of Obstetric Services, Being Involved with Litigation and the Impact on Clinical Practice." (2010) 26 Midwifery 268.
- NHS Litigation Authority. Ten years of maternity claims: an analysis of NHS Litigation Authority Data, Oct 2012.

Method

First the required ethical NHS and University approval will be sought.

The research strategy will use: (1) qualitative assessment of midwives' perceptions by interviewing a sample of midwives in focus groups working in an NHS Trust in London (2) quantitative measurement of the extent of the identified fears (3) evaluation of the extent of fears as against the actual incidences of litigation.

Research objectives

Existing research has identified links between the fear of litigation and defensive medicine (Symons 2000; 1998 Hood et al 2010.) Although there have been studies of doctors' perceptions of litigation little has been written about the impact on midwives (Tharmaartnam et al 1995.) Specifically there is limited research measuring how far midwives perception of the risks of litigation mirror the occurrence of civil suits in the English jurisdictions.

Symons conducted research on the emotional responses of midwives involved in negligence claims in Scotland in 1998 (Symons 1998.) Robertson et al conducted an investigation into how the effects of clinical negligence actions impacted on the emotional well-being of midwives who were the subject of such suits in England (Robertson et al 2014.) Neither study attempted to match the perceived responses against the threat of litigation.

In a larger survey of midwives and doctors primarily in Scotland Symons concluded that a majority thought litigation was escalating and consequently defensive practice increasing (Symons 2000.) In research based in Australia, Lane argued that obstetric practice is based on 'irrational' fear of litigation leading to high intervention rates. She found few incidences of litigation. Lane's paper did not address specifically the issue of midwives perceptions and the actual incidences of civil actions in the UK (Lane 2001.)

This project will build on all these studies and focus on how the perceptions of midwives match a quantitative analysis of actual incidences of litigation or whether the perceptions matches the actual type of actions most commonly reported.

Recommendations for practice

This project challenges the myths and misunderstandings midwives may have by reference to the likelihood of legal action and therefore its consequent impact on professional practice.

The anticipated benefits of the research include additions to the body of knowledge which informs the training of midwives in respect of their perceptions of the threat of litigation as well as identifying any myths or misunderstandings.